SERVICE DATE – DECEMBER 12, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34269

RAILAMERICA, INC., ET AL.–CONTROL AND MERGER EXEMPTION–
A&R LINE, INC., AND J.K. LINE, INC.

Decided: December 11, 2002

By petition filed on October 18, 2002, RailAmerica, Inc. (RailAmerica), et al., seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 to acquire control of A&R Line, Inc. (A&R Line), and J.K. Line, Inc. (J.K. Line), two wholly owned railroad subsidiaries of Cargill, Incorporated (Cargill), and to merge A&R Line and J.K. Line into one of RailAmerica's subsidiaries, Toledo, Peoria & Western Railway Corporation (TPWRY).[1] We will grant the exemption, subject to labor protective conditions.

BACKGROUND

RailAmerica controls one Class II and 31 Class III railroads. TPWRY, one of the Class III railroads, has agreed to acquire the stock of A&R Line and J.K. Line, also Class III railroads, from their parent, Cargill, the only customer of either railroad. According to petitioners, once TPWRY acquires the stock of A&R Line and J.K. Line, it will merge them into TPWRY in order to consolidate the ownership and operation in one entity, generate efficiencies and cost savings, and enhance the financial status of TPWRY.[2]

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[1] RailAmerica directly controls Palm Beach Rail Holding, Inc., which directly controls RailAmerica Transportation Corp., which in turn directly controls Florida Rail Lines, Inc. (Florida Rail). All are noncarriers. Florida Rail controls Toledo, Peoria & Western Railroad Corporation (TPWRR), which directly controls Marksman Corp. (Marksman), which in turn directly controls TPWRY. These entities are referred to collectively as "petitioners."

[2] The Board issued a notice of exemption permitting the merger of Florida Rail, TPWRR, Marksman, and TPWRY in Toledo, Peoria & Western Railway Corporation–Corporate Family Merger Transaction Exemption, STB Finance Docket No. 34193 (STB served May 6, 2002). Petitioners state that the corporate family merger has not yet been consummated.

A&R Line has 27 miles of railroad line located between Winimac, IN, milepost 21.0W (the end of the line), and Kenneth, IN, milepost 0.0E (near Logansport, IN). TPWRY has operated this line under a lease sine 1997.[3] The line connects with TPWRY's own line at Kenneth, IN (milepost 0.0W and 6.1E).

J.K. Line has 17 miles of railroad line located between Monterey, IN, milepost 183 (the end of the line), and North Judson, IN, milepost 199. Marksman, TPWRY's parent and also a Class III railroad, has operated this line under a lease since 1997.[4] At North Judson, the line connects with CSX Transportation, Inc. The line does not connect with TPWRY, Marksman, or Marksman's parent, TPWRR. These three entities are jointly referred to by petitioners as TP&W Railroad.[5]

TP&W Railroad operates approximately 265.9 miles of railroad in the States of Indiana, Illinois, and Iowa. In addition to the lines that it owns, it has trackage rights over lines of The Burlington Northern and Santa Fe Railway Company, Union Pacific Railroad Company, Peoria and Pekin Union Railway Company, and Norfolk Southern Railway Company, and interchanges with 12 separate railroads.

Petitioners state that TPWRY, with the consent and support of Cargill, intends to file a petition for exemption to abandon and discontinue service for the entire 17 miles of line currently operated by Marksman and 15 miles of the line currently operated by TPWRY while the instant petition for exemption is pending. Such a petition will be addressed on its merits, if and when it is filed.

DISCUSSION AND CONCLUSIONS

The acquisition of control of a rail carrier by any number of rail carriers, and the acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers, requires prior approval and authorization of the Board under 49 U.S.C. 11323(a)(3) and (5), respectively. Also, the merger of the properties or franchises of at least two rail carriers into one corporation for the ownership, management, and operation of the previously separately owned

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[3] See Toledo, Peoria & Western Railway Corporation–Lease and Operation Exemption–A&R Line, Inc., STB Finance Docket No. 33482 (STB served Oct. 16, 1997).

[4] See Marksman Corporation–Lease and Operation Exemption–J.K. Line, Inc., STB Finance Docket No. 33481 (STB served Oct. 16, 1997).

[5] According to petitioners, the leased lines have been operated as a part of the integrated TP&W Railroad as a single system.

properties may be carried out only with the approval and authorization of the Board under 49 U.S.C. 11323(a)(1). Under 49 U.S.C. 10502(a), however, we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323-25 is not necessary to carry out the rail transportation policy. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the proposed transaction [49 U.S.C. 10101(2)]; fostering sound economic conditions in transportation [49 U.S.C. 10101(5)]; and encouraging efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from the abuse of market power. Petitioners state that the proposed transaction is a mere change in ownership, not service, operations, or competition. In addition, Cargill, the sole shipper and owner of both lines, supports the exemption.[6]

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of one Class II rail carrier and one or more Class III rail carriers, the transaction will be made subject to the employee protective conditions described in Wisconsin Central Ltd.–Acquisition Exem.–Union Pac. RR, 2 S.T.B. 218 (1997).

The control and merger of two Class III railroads by a holding company and its subsidiaries that control one Class II railroad and 31 Class III railroads is not the type of transaction that requires the filing of a Safety Integration Plan. Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control, STB Ex Parte No. 574 (STB served Mar. 8, 2002). Thus, none will be required here.

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2) because it will not result in any significant change in carrier operations, or exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5). Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) and (3) because there are no plans to

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[6] Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

dispose of or alter properties subject to Board jurisdiction that are 50 years old or older, and it will not substantially change the level of maintenance of railroad properties.

Petitioners request expedited action on the petition for exemption in order to consummate the transaction by December 31, 2002. To accommodate the request, the exemption will be made effective in less than 30 days.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 11323-25 petitioners' acquisition of control of A&R Line and J.K. Line, and the merger of A&R Line and J.K. Line into TPWRY, subject to the employee protective conditions described in Wisconsin Central Ltd.–Acquisition Exem.–Union Pac. RR, 2 S.T.B. 218 (1997).

2. Notice will be published in the Federal Register on December 17, 2002.

3. This exemption will be effective on December 31, 2002. Petitions for stay must be filed by December 23, 2002. Petitions to reopen must be filed by December 27, 2002.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams
Secretary